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SENATE BILL 261

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING THAT THIRD AND SUBSEQUENT DWI CONVICTIONS ARE FELONY OFFENSES; AMENDING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the

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1 influence of any drug to a degree that renders him incapable of  
2 safely driving a vehicle to drive a vehicle within this state.

3 C. It is unlawful for a person who has an alcohol  
4 concentration of eight one hundredths or more in his blood or  
5 breath to drive a vehicle within this state.

6 D. Aggravated driving while under the influence of  
7 intoxicating liquor or drugs consists of a person who:

8 (1) has an alcohol concentration of sixteen  
9 one hundredths or more in his blood or breath while driving a  
10 vehicle within this state;

11 (2) has caused bodily injury to a human being  
12 as a result of the unlawful operation of a motor vehicle while  
13 driving under the influence of intoxicating liquor or drugs; or

14 (3) refused to submit to chemical testing, as  
15 provided for in the Implied Consent Act, and in the judgment of  
16 the court, based upon evidence of intoxication presented to the  
17 court, was under the influence of intoxicating liquor or drugs.

18 E. ~~Every~~ A person under first conviction pursuant  
19 to this section shall be punished, notwithstanding the  
20 provisions of Section 31-18-13 NMSA 1978, by imprisonment for  
21 not more than ninety days or by a fine of not more than five  
22 hundred dollars (\$500), or both; provided that if the sentence  
23 is suspended in whole or in part or deferred, the period of  
24 probation may extend beyond ninety days but shall not exceed  
25 one year. Upon a first conviction pursuant to this section, an

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1 offender may be sentenced to not less than forty-eight hours of  
2 community service or a fine of three hundred dollars (\$300).

3 The offender shall be ordered by the court to participate in  
4 and complete a screening program described in Subsection H of  
5 this section and to attend a driver rehabilitation program for  
6 alcohol or drugs, also known as a "DWI school", approved by the  
7 bureau and also may be required to participate in other  
8 rehabilitative services as the court shall determine to be  
9 necessary. In addition to those penalties, when an offender  
10 commits aggravated driving while under the influence of  
11 intoxicating liquor or drugs, the offender shall be sentenced  
12 to not less than forty-eight consecutive hours in jail. If an  
13 offender fails to complete, within a time specified by the  
14 court, any community service, screening program, treatment  
15 program or DWI school ordered by the court, the offender shall  
16 be sentenced to not less than an additional forty-eight  
17 consecutive hours in jail. Any jail sentence imposed pursuant  
18 to this subsection for failure to complete, within a time  
19 specified by the court, any community service, screening  
20 program, treatment program or DWI school ordered by the court  
21 or for aggravated driving while under the influence of  
22 intoxicating liquor or drugs shall not be suspended, deferred  
23 or taken under advisement. On a first conviction pursuant to  
24 this section, any time spent in jail for the offense prior to  
25 the conviction for that offense shall be credited to any term

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1 of imprisonment fixed by the court. A deferred sentence  
2 pursuant to this subsection shall be considered a first  
3 conviction for the purpose of determining subsequent  
4 convictions.

5 F. A second [~~or third~~] conviction pursuant to this  
6 section shall be punished, notwithstanding the provisions of  
7 Section 31-18-13 NMSA 1978, by imprisonment for not more than  
8 three hundred sixty-four days or by a fine of not more than one  
9 thousand dollars (\$1,000), or both; provided that if the  
10 sentence is suspended in whole or in part, the period of  
11 probation may extend beyond one year but shall not exceed five  
12 years. Notwithstanding any provision of law to the contrary  
13 for suspension or deferment of execution of a sentence, [~~(1)~~]  
14 upon a second conviction, [~~each~~] an offender shall be sentenced  
15 to a jail term of not less than seventy-two consecutive hours,  
16 forty-eight hours of community service and a fine of five  
17 hundred dollars (\$500). In addition to those penalties, when  
18 an offender commits aggravated driving while under the  
19 influence of intoxicating liquor or drugs, the offender shall  
20 be sentenced to a jail term of not less than ninety-six  
21 consecutive hours. If an offender fails to complete, within a  
22 time specified by the court, any community service, screening  
23 program or treatment program ordered by the court, the offender  
24 shall be sentenced to not less than an additional seven  
25 consecutive days in jail. A penalty imposed pursuant to this

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1 paragraph shall not be suspended or deferred or taken under  
2 advisement. [~~and~~

3 ~~(2) upon a third conviction, an offender shall~~  
4 ~~be sentenced to a jail term of not less than thirty consecutive~~  
5 ~~days and a fine of seven hundred fifty dollars (\$750). In~~  
6 ~~addition to those penalties, when an offender commits~~  
7 ~~aggravated driving while under the influence of intoxicating~~  
8 ~~liquor or drugs, the offender shall be sentenced to a jail term~~  
9 ~~of not less than sixty consecutive days. If an offender fails~~  
10 ~~to complete, within a time specified by the court, any~~  
11 ~~screening program or treatment program ordered by the court,~~  
12 ~~the offender shall be sentenced to not less than an additional~~  
13 ~~sixty consecutive days in jail. A penalty imposed pursuant to~~  
14 ~~this paragraph shall not be suspended or deferred or taken~~  
15 ~~under advisement.]~~

16 G. Upon a [~~fourth~~] third or subsequent conviction  
17 pursuant to this section, an offender is guilty of a fourth  
18 degree felony [~~as provided in~~] and, notwithstanding the  
19 provisions of Section 31-18-15 NMSA 1978, [and] shall be  
20 sentenced to a [~~jail term of not less than six months~~] term of  
21 imprisonment of eighteen months, six months of which shall not  
22 be suspended or deferred or taken under advisement.

23 H. Upon any conviction pursuant to this section, an  
24 offender shall be required to participate in and complete,  
25 within a time specified by the court, an alcohol or drug abuse

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1 screening program and, if necessary, a treatment program  
2 approved by the court. The requirement imposed pursuant to  
3 this subsection shall not be suspended, deferred or taken under  
4 advisement.

5 I. Upon a first conviction for aggravated driving  
6 while under the influence of intoxicating liquor or drugs  
7 pursuant to the provisions of Subsection D of this section,  
8 as a condition of probation, an offender shall be required to  
9 have an ignition interlock device installed and operating for a  
10 period of one year on all motor vehicles driven by the  
11 offender, pursuant to rules adopted by the bureau. Unless  
12 determined by the sentencing court to be indigent, the offender  
13 shall pay all costs associated with having an ignition  
14 interlock device installed on the appropriate motor vehicles.  
15 If an offender drives a motor vehicle that does not have an  
16 ignition interlock device installed on the motor vehicle, the  
17 offender may be in violation of the terms and conditions of his  
18 probation.

19 J. Upon a first conviction for driving while under  
20 the influence of intoxicating liquor or drugs pursuant to the  
21 provisions of Subsection A, B or C of this section, as a  
22 condition of probation, an offender may be required to have an  
23 ignition interlock device installed and operating for a period  
24 of one year on all motor vehicles driven by the offender,  
25 pursuant to rules adopted by the bureau. Unless determined by

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1 the sentencing court to be indigent, the offender shall pay all  
2 costs associated with having an ignition interlock device  
3 installed on the appropriate motor vehicles. If an offender  
4 drives a motor vehicle that does not have an ignition interlock  
5 device installed on the motor vehicle, the offender may be in  
6 violation of the terms and conditions of his probation.

7 K. Upon any subsequent conviction pursuant to this  
8 section, as a condition of probation, a subsequent offender  
9 shall be required to have an ignition interlock device  
10 installed and operating for a period of at least one year on  
11 all motor vehicles driven by the subsequent offender, pursuant  
12 to rules adopted by the bureau. Unless determined by the  
13 sentencing court to be indigent, the subsequent offender shall  
14 pay all costs associated with having an ignition interlock  
15 device installed on the appropriate motor vehicles. If a  
16 subsequent offender drives a motor vehicle that does not have  
17 an ignition interlock device installed on the motor vehicle,  
18 the subsequent offender may be in violation of the terms and  
19 conditions of his probation.

20 L. In the case of a first or second [~~or third~~]  
21 offense under this section, the magistrate court has concurrent  
22 jurisdiction with district courts to try the offender.

23 M A conviction pursuant to a municipal or county  
24 ordinance in New Mexico or a law of any other jurisdiction,  
25 territory or possession of the United States that is equivalent

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1 to New Mexico law for driving while under the influence of  
2 intoxicating liquor or drugs, and that prescribes penalties for  
3 driving while under the influence of intoxicating liquor or  
4 drugs, shall be deemed to be a conviction pursuant to this  
5 section for purposes of determining whether a conviction is a  
6 second or subsequent conviction.

7 N. In addition to any other fine or fee [~~which~~  
8 that may be imposed pursuant to the conviction or other  
9 disposition of the offense under this section, the court may  
10 order the offender to pay the costs of any court-ordered  
11 screening and treatment programs.

12 0. As used in this section:

13 (1) "bodily injury" means an injury to a  
14 person that is not likely to cause death or great bodily harm  
15 to the person, but does cause painful temporary disfigurement  
16 or temporary loss or impairment of the functions of any member  
17 or organ of the person's body; and

18 (2) "conviction" means an adjudication of  
19 guilt and does not include imposition of a sentence."

20 Section 2. EFFECTIVE DATE. --The effective date of the  
21 provisions of this act is July 1, 2003.

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